

REMARKS

In the Office Action, the Examiner rejected claim 28 under 35 U.S.C. § 112 as indefinite. The Examiner also rejected claims 28-32 and 34-35 under 35 U.S.C. §103(a) as being unpatentable over Brine (U.S. Patent No. 6,752,730) in view of Matinlassi (U.S. Patent No. 4,233,834). Additionally, The Examiner also rejected claims 28-32 and 34-35 under 35 U.S.C. §103(a) as being unpatentable over Brine (U.S. Patent No. 6,752,730) in view of Merola (U.S. Patent No. 3,697,069). Also, claim 33 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Brine (U.S. Patent No. 6,752,730) in view of Official Notice.

The Applicants address each of these objections and rejections and record below.

The Section 112 Claim Rejections:

The Examiner rejected claim 28 under 35 U.S.C. §112, second paragraph, as indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. Specifically, the Examiner indicated that the term “having a generally uniform outer diameter” is vague and indefinite.

In an attempt to move this case towards allowance, the Applicants have modified claim 28 to remove the term “having a generally uniform outer diameter”, and have instead added the limitation “wherein the distance from said substantially fixed perimeter of said exterior surface of said first half to said centerline is equal to the distance from said substantially fixed perimeter of said exterior surface of said second half to said centerline of a diametrically opposed portion of said second half of said hollow metal tube”. The replacement does not in any way change the scope of claim 28, but hopefully replaces the objected to terminology with terminology that the Applicants submit is clearer. The intent of the limitation is to emphasize the fact that even though the first half and second half of the lacrosse handle have different thicknesses, the outer periphery size of the lacrosse handle remains the same.

While claim 34 was not rejected in lieu the term “having a generally uniform outer diameter”, the Applicants have also amended claim 34 in the same manner as claim 28 for consistency.

Reconsideration of claims 28 and 34 are thus respectfully requested.

The Section 103(a) Claim Rejections:

The Examiner also rejected claims 28-32 and 34-35 under 35 U.S.C. §103(a) as being unpatentable over Brine (U.S. Patent No. 6,752,730) in view of Matinlassi (U.S. Patent No. 4,233,834). The Applicants respectfully traverse the Examiner’s rejection.

The Applicants first refer the Examiner to Section 2143 of the Manual of Patent Examining Procedure, which states that three basic criteria must be met for establishing a *prima facie* case of obviousness:

“First, there must some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach all of the claim limitations.”

“If the examiner does not establish a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.” Section 2142 MPEP, ch. 2100, p. 110. “When the references cited by the Examiner fail to establish a *prima facie* case of obviousness, the rejection is improper and will be overturned.”¹ One cannot use hindsight reconstruction, picking and choosing among isolated disclosures in the prior art, to deny that the claimed invention is unobvious.²

Matinlassi discloses an improved zircaloy tube for pressurized water reactors (“PWR”) by controlling the spirality of the wall thickness eccentricity. These tubes are fuel rods for nuclear reactors.

¹ In re Ochiai, 71 F.3d 1565, 37 U.S.P.Q.2d 1127 (Fed. Cir. 1995), *citing* In re Fine, 837 F.2d 1071, 1075, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

² In re Fine, 837 F.2d at 1075.

The Examiner thus proposes combining a fuel rod from the nuclear industry with a metal handle from the lacrosse industry to arrive at a lacrosse handle having an eccentric construction as disclosed in claims 28-32 and 34-35. The Applicants submit that one of ordinary skill would not look to the nuclear industry for a method to modify a metal lacrosse handle to arrive at the present invention. Thus, the use of Matinlassi as an obviating reference is believed to be inappropriate. Reconsideration of claims 28-32 and 34-35 is thus respectfully requested.

The Examiner also rejected claims 28-32 and 34-35 under 35 U.S.C. §103(a) as being unpatentable over Brine (U.S. Patent No. 6,752,730) in view of Merola (U.S. Patent No. 3,697,069). The Applicants also traverse the Examiner's rejection.

The Merola reference provides a baseball bat with eccentrically thickened walls in the ball striking portion. The thickened walls provide a stronger ball striking area when the bat is properly oriented. As one of ordinary skill will appreciate, the construction and performance of a baseball bat is in no way related to that of a lacrosse handle. The thickened region of the bat is utilized to strike a ball, while the lacrosse handle has no similar function. Instead, the lacrosse handle is coupled to a lacrosse head that is used to catch, retain and throw a lacrosse ball. For this reason alone, the teachings of the Merola reference appear to be inappropriate for use in rejecting the present invention.

In addition, a baseball bat is not consistent in size and shape from the handle (or gripping) end to the ball striking end, but instead has a larger circumference nearer to the ball striking end (also known as the barrel of the bat) than the handle end. In other words, the exterior surface of a baseball bat does not define a substantially fixed perimeter along said length. Conversely, independent claims 28 and 34 both require the exterior surface define a substantially fixed perimeter along said length. Thus, the combination of Merola with Brine does not teach each and every element of claims 28 and 34 as required by Section 2143 of the MPEP. Thus, the rejection of claims 28 and 34, and dependent claims 29-32 and 35, are improper and must be overturned.

The Examiner also rejected claim 33 under 35 U.S.C. §103(a) as being unpatentable over Brine (U.S. Patent No. 6,752,730) in view of Official Notice. The Applicants respectfully traverse the Examiner's rejection, noting that the combination of

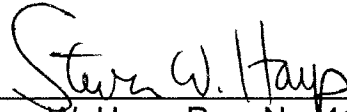
Brine and Official Notice does not teach a lacrosse handle having a first half having an eccentric wall construction. Reconsideration of claim 33 is thus respectfully requested.

Conclusion:

In view of the foregoing, it is submitted that all of the claims remaining in the case, namely claims 28-35, are in proper form and patentably distinguish from the prior art. Accordingly, allowance of the claims and passage of the application to issuance are respectfully solicited. The Commissioner is authorized to charge any additional fees which may be required, or credit any overpayment, to Deposit Account No. 04-1061 in the name of Dickinson Wright PLLC.

Respectfully submitted,

DICKINSON WRIGHT PLLC



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